



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,967	03/12/2004	Charles P. Weimer JR.	IPK-027937-US	1456
1726	7590	06/16/2006	EXAMINER	
INTERNATIONAL PAPER COMPANY 6285 TRI-RIDGE BOULEVARD LOVELAND, OH 45140			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,967

Applicant(s)

WEIMER, CHARLES P.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-12 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 13-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20040312, 20051109
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-18 and Group II, figs. 8-15 and 19-21 in the reply filed on 06 March 2006 is acknowledged. The traversal is on the ground(s) that (1) the restriction requirement provides no reasons or examples to support the alternative method of use, (2) the requirement fails to show that the proposed use is materially different from the claimed use, (3) no serious burden would be required to handle all the claims as opposed to those elected. This is not found persuasive because the restriction requirement as set forth in the action provides prima facie justification for restriction by providing an example of a materially different alternative use and the search required for method is not required for the product. The burden of providing reasons as to why Applicant believes the example is not materially different from that claimed or otherwise providing convincing reasons as to why the requirement is in error now lies with the Applicant. With respect to the restriction requirement between the product and the method, examination and search of both the method and product would involve significantly more time as compared to examination of the product alone. Also, in view of the fact that claims 1-18 all read upon the elected species, the election of species requirement is currently considered moot.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 19 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Drawings

3. Figs. 8, 10-12, 14, 16, 19 and 20 are objected to under MPEP 806.02 and 37 CFR 1.84. Photographs or photomicrographs are not ordinarily permitted in utility patent applications. Photographs or photomicrographs are only acceptable as final drawings, in lieu of India ink drawings, to illustrate inventions which are incapable of being accurately or adequately depicted by India ink drawings and must show the invention more clearly than can be done by India ink drawings. Since the invention shown in these figures is considered to be clearly capable of being illustrated by India ink drawings, and since no showing has been made with respect to any inability to accurately or adequately depict the invention using India ink drawings, the photographs or photomicrographs are not acceptable as final drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

Art Unit: 3727

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. Claims 1-4 and 13-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear with respect to whether the containers of product are being positively claimed or merely as an intended use of the package. The preamble indicates that an intended use of the package is to ship and store containers. However, the last three lines of claim 1 are ambiguous as to whether the containers are being claimed or not, i.e. "defining an elongate interior space in which containers of product are placed..." is unclear as to whether such placement has already occurred or is done at another time.

In claim 2, line 5, "said parallelogram-shaped arrangement" lacks antecedent basis in the claims, i.e. only a generally parallelogram-shaped arrangement was previously set forth.

In claim 4, line 5, "an adjacent end wall" is a double inclusion of an element insofar as the end walls were previously introduced into the claims.

In claim 13, lines 6 and 7 are unclear with respect to how a plurality of end panels are foldably connected along a single common fold line to opposite ends of the center panel, i.e. it would appear that a plurality of fold lines would be required.

In claim 13, line 8, "the opposite side edges" lacks antecedent basis in the claim.

In claim 18, it is unclear how the edge is "free" if a glue flap is connected thereto, i.e. "free" appears to mean free of connection to something else. If some other meaning is being defined by the term "free", then the term is unclear in scope.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Quaintance (fig. 5 emb). Quaintance discloses a rectangularly shaped box including side walls 33, 34 and end walls 43 disposed orthogonally to one another. No distinction is seen between the container claimed and that of Quaintance as a result of the claimed intended use of the container to receive containers which are in a parallelogram arrangement, i.e. the container of Quaintance is considered capable of receiving containers of an appropriate size and oriented as claimed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Quaintance in view of Walter et al. Quaintance discloses all structure of the claimed container except containers of product within the container oriented in nested offset relationship to one another in

Art Unit: 3727

a generally parallelogram shaped arrangement. Walter et al teaches that it is known to package containers in a generally rectangular box where the containers are oriented in a nested offset relationship and where at least some of the containers are oriented in a generally parallelogram shaped arrangement. It would have been obvious to package containers in the box of Quaintance in an arrangement as taught by Walter et al as a mere selection of the type and arrangement of the contents one wishes to package. It is noted that the teaching of Walter et al is considered to apply to any number of rows or contents one wishes to package. Such a selection is within the level of skill in this art.

Allowable Subject Matter

9. Claims 5-12 are allowed.
10. Claims 2-4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
11. Claims 13-18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

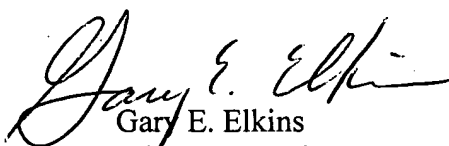
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
12 June 2006